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IN THE

Supreme Court of the United States

OCTOBER TERM 1964

J. H. PAGE, ET AL,

Petitioners,

v.

PAN AMERICAN PETROLEUM CORPORATION, ET AL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE THIRTEENTH SUPREME JUDICIAL DISTRICT OF TEXAS

RESPONDENTS' BRIEF IN OPPOSITION

GEORGE WEAR
Continental Life Building
Fort Worth, Texas

CECIL N. COOK
NEAL POWERS, JR.
1100 Esperson Building
Houston, Texas

ROY L. MERRILL
2120 Travis Street
Houston, Texas

DWIGHT H. AUSTIN
510 Gulf Building
Houston, Texas

CLEVELAND DAVIS
912 N. Velasco Street
Angleton, Texas

JOSEPH W. MOORE
2010 Gulf Building
Houston, Texas

ROY C. LEDBETTER
Kirby Building
Dallas, Texas

JOE M. BLOCK
307 Avondale Street
Houston, Texas

JOYCE COX
2828 Gulf Building
Houston, Texas

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To The Honorable Supreme Court of The United States:

On motion for summary judgment, the District Court of Brazoria County, Texas, held, on the undisputed facts of record, and as an application of Texas law thereto, that the title of Petitioners' ancestors to the land in controversy had been divested from them. This Trial Court judgment was affirmed by the Thirteenth Court of Civil Appeals of Texas and by the Supreme Court of Texas refusing writ of error.

In opposition to the grant of petition for writ of certiorari, Respondents say:

I.

THE LAW APPLIED BY THE TEXAS COURTS IS THE PROPERTY LAW OF TEXAS AND CONCLUSIVELY DETERMINED.

There was involved below nothing but application of Texas law to undisputed facts. The holdings below are in accord with the ancient common law analyzed in *Fletcher* v. *Fuller,* 120 U.S. 534, at 550 (1887); *United States* v. *Devereux,* 90 Fed. 182, at 187 (CCA Fourth, 1898); *Duke* v. *Houston Oil Company of Texas,* 128 S.W. 2d 480 (Tex. Civ. App., writ of error dismissed by the Supreme Court, judgment correct); *Magee* v. *Paul,* 110 Tex. 470, 221 S.W. 254. This area of property law is peculiarly an area of State cognizance. *Erie Railroad Company* v. *Tompkins,* 304 U.S. 64 (1938).

The cases cited by Petitioners are cases of factual dispute or doubtful inference. That in those cases decision by juries was required or approved does not convert the sweeping generalities in some of them from being purely dictum, or give them applicability to a case such as this in which it has been conclusively decided by the Court on the facts before the Court that there is no factual issue or doubt as to conclusion. We respectfully submit that the issues have been settled in this case on its own facts, under Texas law, and by those Courts which have complete authority thus to decide. *Erie Railroad Company* v. *Tompkins, supra; Murdock* v. *City of Memphis,* 20 Wall. 590 (1874); *Black* v. *Cutter Laboratories,* 351 U.S. 292 (1956).

II.

FROM BEGINNING TO END NO FEDERAL QUESTION WAS RAISED IN THE STATE COURTS.

In the absence of Federal constitutional issues being raised and determined below, no Federal question can be entertained here. *Walters* v. *City of St. Louis,* 347 U.S. 231, 233 (1954); *Newsom* v. *Smith,* 365 U.S. 604 (1961); *Michel* v. *Louisiana,* 350 U.S. 91 (1955); *Pennsylvanid Railroad Co.* v. *Illinois Brick Company,* 297 U.S. 447 (1936).

III.

NO FEDERAL QUESTION IS PRESENTED BY THE PETITION.

There was no denial of a jury trial on any disputed matter of fact by the holdings below. The now familiar and essential summary judgment procedure in Texas, paralleling the Federal Rule, does not deny jury trial, determinations thereunder being simple determinations that no disputed issue of fact is present. Such is the case here. Even if — and this Court has held repeatedly to the contrary[1] — the Seventh Amendment did require State jury trials when there are disputed issues of fact, the question would not be present here.

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[1] *Barron* v. *Baltimore,* 7 Pet. 243 (1833); *Livingston* v. *Moore,* 7 Pet. 469 (1833); *Edwards* v. *Elliott,* 21 Wall. 532 (1874); *Walker* v. *Sauvinet,* 92 U.S. 90 (1875); *Minneapolis & St. Louis Railroad Co.* v. *Bombolis,* 241 U.S. 211 (1916); *Southern Railway Company* v. *City of Durham,* 266 U.S. 178 (1924). A different ruling would make this Court reviewer of the facts in cases disposed of by summary judgment, instructed verdict, and judgments *non obstante veredicto,* and likewise require it to determine what issues it deems to be fact questions for the jury as distinguished from law questions for the Court in cases submitted to a jury. Unavoidable intrusion into the laws of the State would result.

Respondents submit that the petition for writ of certiorari should be denied.

Respectfully submitted,

GEORGE WEAR
Continental Life Building
Fort Worth, Texas

CECIL N. COOK
NEAL POWERS, JR.
1100 Esperson Building
Houston, Texas

ROY L. MERRILL
2120 Travis Street
Houston, Texas

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ROY C. LEDBETTER
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Dallas, Texas

JOE M. BLOCK
307 Avondale Street
Houston, Texas

JOYCE COX
2828 Gulf Building
Houston, Texas

Joyce Cox
Attorneys for Respondents

CERTIFICATE OF SERVICE

A copy of this Brief in Opposition was served upon counsel of record for Petitioners, Mr. George Eddy, 1114 Texas Ave. Building, Houston, Texas, by depositing the same in the United States mail with first class postage thereon, properly addressed, in compliance with Rule 33(1) of the Revised Rules of the Supreme Court of the United States.

Joyce Cox